

**Initial discussion of management of paragliding activities and similar sports on DNR Properties and public waters; Administrative Cause No. 10-061A**

Last year, a citizen's petition for rule change was initiated to authorize paragliders to be launched from the Lake Wawasee Access Site, managed by DNR's Division of Fish and Wildlife. Consistent with a nonrule policy document of the Natural Resources Commission, an informal DNR committee was appointed by the Director Rob Carter to review the petition. The DNR committee consisted of Major Steve Hunter, Chair; John Bergman; and Bill Bean. Maj. Hunter presented the committee's recommendations to the Commission at its March meeting. The Commission did not grant the petition but determined a more-broad based review of the management of active sky and water sports should be undertaken with the Advisory Council ultimately making recommendations for what, if any, changes should be made to Commission rules. The pertinent portion of the March Commission minutes is set forth below. The purpose of this agenda item is to initiate a discussion of management of paragliding and other active sky and water sports on DNR properties and public waters.

**Consideration of Petition for Rule Change filed by Alan Abair, to amend rule pertaining to the use of the paragliders on public access sites; Administrative Cause No. 09-161L**

Major Steve Hunter, Division of Law Enforcement, presented this item. He said the property for consideration is DNR's Lake Wawasee Public Access Site. Alan Abair wishes to conduct paragliding activities at the access site and other DNR properties. Hunter said in the summer of 2009 there was a conflict of paragliding at the site and that Abair was contacted by conservation officers and was asked to "cease his activities". A group of "out of state individuals" were also participating in the paragliding and were also told to cease activities. Major Hunter said this paragliding activity involved a motor boat towing individuals by means of a cable attached to the glider which disconnected from the boat, sailed around, and then landed on the Lake Wawasee Public Access Site.

In September, Abair filed a petition with the Commission. As reflected in the backup materials for this agenda item, the petition stated: "I am trying to get the rule number 312 IAC 8-2-9 amended or redesignated to allow paragliders to be launched and landed at the park at the boat launch area at sought end of Lake Wawasee."

Major Hunter said, "Indiana boating laws apply to parasailing on Lake Wawasee. The property rules do not apply, but do apply to the public access site. Parasailing is prohibited there by property rule." He explained that by property rule, Abair would need to apply for a special use permit. Major Hunter said Abair was given the indication that the Division of Fish and Wildlife would not be in favor of permitting paragliding on Lake Wawasee access site. He said the Division of Law Enforcement suggests that Abair apply for the special use permit.

Chairman Poynter observed. "I understand parasailing is different than paragliding which is different than tube kiting and tow kites and all this other stuff. What I heard you say, Major Hunter, is that the course of action Abair has is to file for a special permit. If he is denied that permit, he would then have an opportunity for an appeal. Is he here, by the way?"

Major Hunter responded, “No.” Abair was not present.

The Chair added, “He contacted our office by email.” A copy of the email was copied on yellow paper and distributed to Commission members at their seats immediately prior to the meeting. “Out of respect for the petitioner’s concern and his request, I think there’s enough confusion around some of these definitions, that if we fasten on to his specific request regarding paragliding, it would only lead to further frustration. In reading some of the background material from the committee..., my personal opinion, and I would invite the DNR and Commission to weigh in on this, it might make sense to defer to the Advisory Council to look at this in a much more broad-based way. ”

John Davis reflected: “Mr. Chairman, I think that is an excellent suggestion. I think exactly what we should do is to clarify all these different terms. You know there are just a lot of different situations. We have our own properties, our reservoirs. We have property on Lake James and Lake Wawasee, and we have lots of different scenarios and lots of different activities. I think Steve Hunter is exactly right to outline what this person has as an option to do now, which is just to apply for a special permit for right now. We will take that on to look at all the terms, different scenarios, and also what kind of crowd would result on a lake, and times.” The Commission packet refers to boardsailing, kite boarding, tube kits, tow kites, and paragliders. If these are recreational activities that people want to pursue, we need to have a handle on what they are and how they should be administered.

Tom Easterly said, “I have a process question. If we wanted to do something like this, wouldn’t we want to change a rule or a law and put the requirements that you have to meet in order to do this, so we’d have to go through the normal process where you propose a rule, and there’s a hearing? I think just saying ‘yes’ to this with no conditions around it, doesn’t make a lot of sense.”

Chairman Poynter added, “I agree. And, there’s even more complication to this because I don’t want him to be frustrated, and I don’t want more issues for the Division of Law Enforcement officers up there. That gets to be a circle. I think there’s enough confusion about these sports, that there are probably things that we have yet to even uncover. I read in the background that there’s different rankings and qualifications that they have for their associations. That’s beyond my scope. I think it would be best if one of the members of our Commission offered a motion to send this to the Advisory Council for further review so we can look at it in a more comprehensive fashion.”

Larry Klein asked, “Are we creating a storm out of nothing? If it’s one fellow? If there is a process by which Abair could obtain his permission to do this already in place, let that happen first and just advise him that the petition is premature. Apply for your permit, like you’re supposed to, and then come what may. You’re talking about one guy. Now we’re talking about promulgating rules through the State of Indiana and investigating reservoirs.”

The Chair responded, “There are existing rules. That’s part of what I’m looking at here.”

Klein added, “As opposed to kicking it off to some other group for study—what if he gets his permit?”

The Chair responded, “Well, I think the recommendation from Major Hunter is that they wouldn’t get their permit.”

Easterly added, “And then they have to appeal and then that goes on.”

Mark Ahearn reflected, “And then that gets it on Jane’s agenda” on the Commission’s AOPA Committee.

Jane Ann Stautz interjected, “That’s right.”

Ahearn continued, “Are we going to request the Advisory Council look at this and say either we need a change in policy, we need clarification in existing rules, or the existing rules are sufficient as written, or some combination.

The Chair responded, “Yes.”

Ahearn continued, “I think that’s what we’re waiting to have them come back and tell us, so that we address it in a rule-making mode, rather than adjudicatory mode.”

Chairman Poynter replied, “Again, we’re bound somewhat by limitations of the rule-making process. And, I think this might be a little easier and a little more amenable to the citizen’s petition that we did receive, or his request, for this rule to be changed. I think he has an intention, and some of the unintended consequence of his request, yields a bigger question for us to look at, as it pertains to types of properties, hours of operation, qualifications for safety and all sorts of other things, in a little bit more of a comprehensive way that then can be brought to us to amend the existing rules, if necessary, to add perhaps nonrule policy documents, if it’s outside the scope of a rule, etc. That would be what I would hope that the Commission would do here so that we can move this forward efficiently.” We would not be approving Abair’s petition to amend the rules to authorize paragliding specifically at the Lake Wawasee Public Access Site.

Thomas Easterly moved to direct this item to the Advisory Council for recommendations as to the possible need for rule adoption regarding the referenced sports on DNR properties. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.